



June 20, 2024

Attn: Wayne Adams
Excel Aircraft, LLC
2228 SE Loop 59
Carthage, TX 75633
wayneadams@exclmulching.com

Default Notice

RE: 1041-SunZia South Wind, New Mexico and 1047-SunZia North Wind, New Mexico

Dear Mr. Adams:

I am writing to formally notify you that Excel is in default on the SunZia South and North Wind Projects.

Reference is hereby made to that certain Subcontract Agreement dated as of December 7, 2023 (the “**Agreement**”) between Blattner Energy, LLC (“**Blattner**”) and Excel Aircraft, LLC (“**Subcontractor**”) for Work at the SunZia South Wind Project (“**Project**”).

Excel demanded additional money to complete the Work that it agreed to complete in the Subcontract, and threatened to walk-off the Project if Blattner refuses to comply. Excel has also failed to meet its minimum output of 7,000 LF per day, and has stopped completing trench runs in accordance with the scope and schedule, resulting in other subcontractors on the Project being delayed. Please be advised that Excel’s actions are a material breach of the Subcontract. Excel is currently in default.

You bid between \$3.40 and \$3.75 per linear foot to complete the trenching Work on SunZia North and South. Blattner relied on your commitment and awarded you both Projects based on your representation that you would complete both Projects for the quoted price. Later, Blattner and Excel executed a Subcontract formalizing the agreement with respect to SunZia South. If the parties are unable to resolve this matter, Blattner has the right to enforce the Letter of Intent (“**LOI**”) dated April 14, 2023 on SunZia North as well, whether under contractual or equitable theories, given its reliance on your bid when awarding you the Project.

Your demand to double the Subcontract Price to \$6.75 / linear foot across both jobs was not made in good faith. Excel has no legal basis to make such a demand.

Excel specifically agreed in the Subcontract and the LOI to perform the Work for between \$3.40-\$3.55 / linear foot. Subcontract, Ex. A, Section 1. Excel was provided with a copy of the geotechnical report and it did not raise any issues at that time. Excel also agreed that “Subcontractor has assumed all risk for rock sawing and trenching with the SOV price.” Subcontract, Ex. A, SC 21. The risk that additional rock trenching may be required is yours, not Blattner’s. Excel also agreed to “provide trenchers sized to handle the site conditions and maintain the required daily footage, operators and spotters to trench.” Subcontract, Ex. A, Section 1(1).

You are only entitled to a Change Order if it is mutually agreed to in writing, and if Blattner is also entitled to a Change Order under the Owner Contract. *See Subcontract, Section 14(d).* A Subcontractor's failure to properly bid a Project is not an adequate basis for a Change Order under the Owner Contract. Moreover, you specifically agreed that Excel would "only be allowed to provide a Change Order in regard to quantity changes or agreed to change of work scope by Blattner." Subcontract, Ex. A, SC 12. Per Special Condition 12, you are not even allowed to propose a change to the price per linear foot.

Your representation that you intend to walk off the Project if Blattner refuses to double the agreed upon Subcontract Price amounts to a repudiation of the Subcontract. **Blattner hereby demands assurances that you will complete the Work for the price agreed upon by the parties and memorialized in the Subcontract.**

In addition to repudiating the Subcontract as set forth above, you have also defaulted on your performance obligations. Excel has ceased completing trench runs at the Project site, causing Blattner to suspend the work of its cable installer. Blattner is aware that Excel has the equipment necessary to continue performing its scope, but Excel is nevertheless refusing to perform.

If you provide the assurances demanded herein, you must also **provide a recovery plan detailing your proposal to recover your delay and complete your Work within the time required by the Subcontract.**

Please be advised that Blattner has expansive remedies under the Subcontract to remedy Excel's default, including, without limitation:

- The right to terminate the Subcontract¹;
- The right to take possession of all of your equipment, supplies, and tools necessary to complete the Work at your sole cost and expense²;
- The right to hire a substitute contractor to complete your Work³, and then back charge the additional costs associated with hiring someone else to you⁴; and
- The right to collect liquidated damages from you as a result of your failure to timely complete the Work.⁵

If Excel refuses to provide the assurances demanded herein and fails to cure its ongoing default, the damages Blattner incurs will be well over seven figures. Blattner will be forced to hire a substitute contractor and hold Excel liable for the additional costs associated with their retention, whether by back charges, litigation, or otherwise. We strongly urge you to reconsider your position and to perform your Work according to the mutually agreed terms.

Please provide assurances in writing that you will complete the Work on SunZia South and North for the price previously agreed to. In addition, include with your correspondence a recovery plan detailing your plans to accelerate your performance and complete the Work in the time required by the Project schedule.

¹ Subcontract, Section 20(a)(iii), (v), and (vii).

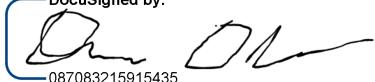
² Subcontract, Section 21(b)(iv).

³ Subcontract, Section 21(b)(iii).

⁴ Subcontract, Section 12.

⁵ Subcontract, Section 23.

Sincerely,

DocuSigned by:


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Dennis O'Mara

Director of Construction

cc: Derek Harvieux, Legal Counsel
Victoria Braegelmann, Project Support Coordinator
Jessica Loidolt, Contracts Manager
John Marshall, Project Manager
Eric Hardy, Project Manager
Frank Cumnock (frankcumnock@exclmulching.com)
Matt Sparks (mattsparks@exclmulching.com)